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2031-CC00689 - ALYSSA J HUFFMAN V ZOLL MEDICAL CORPORATION (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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07/07/2020 ☐ [Corporation Served](#)

Document ID - 20-SMCC-1249; Served To - ZOLL MEDICAL CORPORATION; Server - SO COLE COUNTY-JEFFERSON CITY; Served Date - 29-JUN-20; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - By leaving a copy with CSC Lawyers, SL Designee.

06/12/2020 ☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-1249, for ZOLL MEDICAL CORPORATION. Summons saved and attached in PDF format for Attorney to retrieve from secure case.net./adb

06/11/2020 ☐ [Filing Info Sheet eFiling](#)

Filed By: ADAM PEKELO PIHANA

☐ [Pet Filed in Circuit Ct](#)

Plts Petition; Exhibit./adb

On Behalf Of: ALYSSA J HUFFMAN

☐ [Judge Assigned](#)

Exhibit A

VENUE AND JURISDICTION

5. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

6. This cause of action sounds in tort.

7. The injuries suffered by Plaintiff on account of the actions of Defendant were first sustained in Greene County, Missouri.

8. Defendant's corporate headquarters are located in Chelmsford, Massachusetts.

9. Plaintiff seeks damages in excess of \$25,000.00.

10. Plaintiff timely dual-filed a charge of discrimination ("the Charge") with the Missouri Commission on Human Rights ("MCHR") and Equal Employment Opportunity Commission ("EEOC.")

11. The MCHR issued Plaintiff a Notice of Right to Sue on March 18, 2020. *See* "Notice of Right to Sue," dated March 18, 2020, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

12. The claims sued on pursuant to Exhibit A are made within ninety (90) days of March 18, 2020.

13. Upon information and belief, Defendant has had more than six (6) employees in the last calendar year.

14. Pursuant to R.S.Mo. §§ 506.500 and 508.010(6), this Court has jurisdiction and venue in this cause.

ALLEGATIONS COMMON TO ALL COUNTS

15. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

16. Plaintiff began working for Zoll Medical Corporation (Zoll) in September 2016 as a territory manager in Defendant's Temperature Management Division.

17. Plaintiff sold medical products that managed the temperature of a patient's bloodstream so as to prevent injury - specifically the Thermogard product and the STx Surface Pad System.

18. Plaintiff suffers from trigeminal neuralgia, a chronic pain condition that causes excruciating facial pain.

19. When it flares up, the pain can become so severe that Plaintiff cannot leave her house.

20. Plaintiff's territory included the Barnes Jewish Hospital system, which consisted of several hospitals with dedicated intensive care units.

21. Plaintiff established a productive sales relationship with Barnes Jewish.

22. In November 2018, as a result of Plaintiff's efforts, Zoll and Barnes Jewish were in talks for Zoll to sell Barnes Jewish forty STx Surface Pad System units and at least twelve Thermogard units.

23. Plaintiff was the second-most productive person in her division, second only to another salesman in Chicago.

24. Plaintiff was compensated by Defendant in whole or in part commission basis, as defined by R.S.Mo. §407.911.

25. During her employment, Plaintiff provided Defendant with information for three sales for which commissions should have been paid to her within thirty days of acceptance and payment.

26. The machines were delivered, evaluations were completed, agreements to purchase were confirmed, and Defendant was in the process of collection because the facilities are awaiting budget approval.

27. The specific orders were:

a. Barnes Jewish Hospital Oncology

1. **Total commission:** \$6,280.44

b. Barnes Jewish Hospital – SICU/Burn

2. **Total commission:** \$14,469.88

c. CCU

3. **Total commission:** \$7,234.94

d. Jewish Hospital - Louisville, KY

4. **Total commission:** \$14,654.37

e. University of Missouri-Columbia

5. **Total commission:** \$11,165.23

28. Additional units were sold to Baptist Hospital in Little Rock, AR, the University of Louisville Hospital and University of Kansas Hospital.

29. For these orders to have been obtained for Defendant, Plaintiff conducted significant work in the form of (among other things) initiating a series of meetings to gain approval to proceed (typically taking at least 6 months), developing protocols, obtaining assent to the terms of the evaluation needed to be signed by the Hospital and returned, and working to deploy the machines.

30. In January of 2019, Plaintiff suffered a trigeminal neuralgia flare-up while in Kansas City, Missouri, traveling for work.

31. Plaintiff could not work the entire next week, except from home.

32. Plaintiff texted Defendant on February 19, 2019, and advised that she was going to schedule surgery (a microdecompression) to treat the trigeminal neuralgia.

33. Plaintiff was told to schedule the surgery and that Defendant would work with her.

34. On March 1, 2019, Plaintiff received an email advising that she needed to be available for a conference call Monday, March 4, 2019.

35. On that conference call Neil Johnston, the President of the Zoll Circulation Division and Mark Moulaison of the human resources department, told Plaintiff that her position was being eliminated as part of a reduction in force due to the performance of the Temperature Management Division, effective March 8, 2019.

36. There were fourteen people employed in the Temperature Management Division.

37. Six people (including Plaintiff) were terminated and eight people were either kept on or allowed to transfer to other positions.

38. Plaintiff was not offered a transfer.

39. The most successful salesperson numbers-wise was kept on.

40. By the time of her termination, Plaintiff had sold eleven Thermogard machines.

41. An individual who had sold the same number of machines as Plaintiff had remained employed, but another individual with zero machine sales also remained employed.

42. Defendant also kept on several other individuals with significantly fewer sales than Plaintiff.

43. Two individuals with zero machine sales were transferred to different divisions within the company.

44. Another individual with zero machine sales was permitted to reapply and eventually obtained a position in a different division within the company.

45. Upon information and belief, none of the individuals who were allowed to remain employed also reported a disability to Defendant or requested a reasonable accommodation because of a disability from Defendant prior to the March 8 reduction in force.

46. Following her termination, Defendant failed and refused to pay Plaintiff commission payments due and owing.

COUNT I
Violation of the Missouri Human Rights Act
Disability Discrimination

47. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

48. Plaintiff is a member of a protected group pursuant to the Missouri Human Rights Act because her condition substantially limited one or more of her major life activities but did not prevent her from performing her job with or without reasonable accommodations.

49. Defendant subjected Plaintiff to discrimination on account of a disability, a record of disability, and/or perception of disability it held.

50. Plaintiff is a member of a protected group and was subjected to discrimination due to a disability, record of disability, and/or a perception of disability; a causal nexus exists between the discrimination and Plaintiff's membership in the protected group; the discrimination/harassment impacted a term, condition, or privilege of Plaintiff's employment with Defendant; Plaintiff was terminated on account of her disability, record of disability, and/or perception a disability.

51. As a direct and proximate result of the discrimination, as described herein, Plaintiff has suffered the following:

- a. Lost income, including but not limited to back pay, front pay and lost benefits;
- b. Lost career opportunities, including but not limited to opportunities for advancement, status, pay and benefits; and
- c. Mental and emotional anguish defined as “garden variety” by Missouri law.

52. Pursuant to the MHRA, R.S.Mo. § 213.111, Plaintiff is entitled to and hereby requests an award of attorney’s fees and post judgment interest at the highest lawful rate on any award or verdict provided.

53. The actions of Defendant were willful, wanton, and in complete indifference to Plaintiff’s rights. These actions are sufficient to justify the award of punitive damages to deter said Defendant, and others similarly situated, from like conduct in the future.

WHEREFORE, Plaintiff prays for an award of damages against defendant Zoll Medical Corporation in an amount determined to be fair and reasonable; for an award of attorney’s fees; for an award of post-judgment interest at the highest lawful rate on any judgment rendered; for punitive damages sufficient to deter Defendant and others similarly situated from like actions in the future; and for such other and further relief as the Court deems just and proper.

COUNT II
Violation of the Missouri Human Rights Act
Disability Retaliation

54. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

55. Defendant terminated Plaintiff because Plaintiff opposed Defendant's discrimination against her based on a disability.

56. The termination violated R.S.Mo. § 213.070(2).

57. The retaliation occurred because Plaintiff opposed Defendant's discrimination based on a disability.

58. As a direct and proximate result of Defendant's conduct as described herein, Plaintiff suffered lost income, including but not limited to back pay and front pay, lost career opportunities, including but not limited to opportunities for advancement in status and pay, the loss of employment benefits, and mental and emotional anguish defined as "garden variety" by Missouri law.

59. The retaliatory acts of Defendant were made with malicious or reckless indifference to Plaintiff's protected rights, and/or were outrageous because of their evil motive and/or reckless indifference to Plaintiff's rights.

60. As Defendant's conduct complained of herein was intentional, willful, malicious, oppressive, and in reckless disregard of Plaintiff's rights, Plaintiff is entitled to recover and hereby requests punitive damages against Defendant.

61. Pursuant to R.S.Mo. § 213.111(2) of the MHRA, Plaintiff is entitled to and hereby requests an award of attorney's fees.

62. Plaintiff further requests post judgment interest on any award of damages calculated at the highest lawful rate.

WHEREFORE, Plaintiff prays for an award of damages against defendant Zoll Medical Corporation in an amount determined to be fair and reasonable; for an award of attorney's fees; for an award of post-judgment interest at the highest lawful rate on any judgment rendered; for

punitive damages sufficient to deter Defendant and others similarly situated from like actions in the future; and for such other and further relief as the Court deems just and proper.

COUNT III
Violation of the Missouri Human Rights Act
R.S.Mo. § 213.070(1)

63. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

64. Defendant and their employees, through their actions and comments as described above, aided, abetted, and compelled violations of the Missouri Human Rights Act.

65. As such, Defendant violated R.S.Mo. § 213.070(1).

66. Plaintiff's disability was a factor compelling Defendant, and its employees, to aid, abet, and compel acts that violated the Missouri Human Rights Act.

67. A term, condition, or privilege of Plaintiff's employment was affected by the foregoing as described above.

68. As a direct and proximate result of the acts described above, Plaintiff suffered lost income, including but not limited to back pay and front pay, lost career opportunities, including but not limited to opportunities for advancement in status and pay, the loss of employment benefits, and mental and emotional anguish defined as "garden variety" by Missouri law.

69. The acts of Defendant were made with malicious or reckless indifference to Plaintiff's protected rights, and/or outrageous because of their evil motive and/or reckless indifference to Plaintiff's rights.

70. As Defendant's conduct complained of herein was intentional, willful, malicious, oppressive, and in reckless disregard of Plaintiff's rights, Plaintiff is entitled to recover and hereby requests punitive damages against Defendant.

71. Pursuant to R.S.Mo. § 213.111(2) of the MHRA, Plaintiff is entitled to and hereby requests an award of attorney's fees. Plaintiff further requests post judgment interest on any award of damages calculated at the highest lawful rate.

WHEREFORE, Plaintiff prays for an award of damages against defendant Zoll Medical Corporation in an amount determined to be fair and reasonable; for an award of attorney's fees; for an award of post-judgment interest at the highest lawful rate on any judgment rendered; for punitive damages sufficient to deter Defendant and others similarly situated from like actions in the future; and for such other and further relief as the Court deems just and proper.

COUNT IV
Violation of the Missouri
Merchandising Practices Act (MMPA)
R.S.Mo. § 407.912

72. Plaintiff hereby restates, reincorporates, and realleges all preceding paragraphs as though fully restated herein *in haec verba*.

73. Nothing in in section 407.911, *et seq.* shall be construed to "impair a sales representative from collecting commissions on products or services ordered prior to the termination of the contract between the principal and the sales representative but delivered and accepted by the purchaser after such termination." Mo.Rev.Stat. § 407.912

74. Under § 407.912, a sales representative is entitled to be paid all commissions then due within thirty days, as well as any and all commissions that become due after the date of such termination, within thirty days of becoming due. Mo. Rev. Stat. § 407.912.

75. Under § 407.913, a failure to timely pay the sales representative commissions earned by such sales representative subjects the principal to liability for actual damages, and an additional amount as if the sales representative were still earning commissions calculated on an

annualized *pro rata* basis from the date of termination to the date of payment. Mo.Rev.Stat. § 407.913.

76. Plaintiff may also recover her reasonable attorney's fees and costs. Mo.Rev.Stat. § 407.913.

77. To date, Defendant has failed and refused to pay Plaintiff her commissions due and owing.

78. Plaintiff is owed \$53,804.87 in unpaid commissions in addition to any amounts due pursuant to § 407.913 in the way of any additional amount calculated on an annualized *pro rata* basis from the date of termination to the date of payment, attorneys' fees and costs, and interest.

79. Defendant's failure and refusal to pay Plaintiff her commissions due and owing was malicious or done with reckless indifference to Plaintiff's protected rights, and/or outrageous because of Defendant's evil motive and/or reckless indifference to Plaintiff's rights.

80. As Defendant's conduct complained of herein was intentional, willful, malicious, oppressive, and in reckless disregard of Plaintiff's rights, Plaintiff is entitled to recover and hereby requests punitive damages against Defendant.

WHEREFORE, Plaintiff prays for an award of damages against defendant Zoll Medical Corporation in the amount of \$53,804.87 for unpaid commissions due and owing; for an additional amount calculated on an annualized *pro rata* basis from the date of termination to the date of payment; attorneys' fees and costs, and interest an amount determined to be fair and reasonable; for an award of post-judgment interest at the highest lawful rate on any judgment rendered; for punitive damages sufficient to deter Defendant and others similarly situated from like actions in the future; and for such other and further relief as the Court deems just and proper.

HALL ANSLEY, P.C.

By: /s/ Adam P. Pihana

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sblair@hallansley.com

Missouri Bar Number 52706

ADAM P. PIHANA

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Missouri Bar Number 59540

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GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
MISSOURI COMMISSION ON HUMAN RIGHTS

ANNA S. HUI
DEPARTMENT DIRECTOR

Martha Staggs
COMMISSION CHAIRPERSON

ALISA WARREN, Ph.D.
EXECUTIVE DIRECTOR

2031-CC00689

Alyssa J. Huffman
3158 W. Lakefront Court
Springfield, MO 65810

NOTICE OF RIGHT TO SUE

RE: Alyssa J. Huffman vs. ZOLL MEDICAL CORPORATION
E-08/19-51335 28E-2019-01431C

The Missouri Commission on Human Rights (MCHR) is terminating its proceedings and issuing this notice of your right to sue under the Missouri Human Rights Act because you have requested a notice of your right to sue.

This letter indicates your right to bring a civil action within 90 days of the date of this notice against the respondent(s) named in the complaint. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have occurred, but it must be brought no later than two years after the alleged cause occurred or its reasonable discovery. Upon issuance of this notice, the MCHR is terminating all proceedings relating to the complaint. No person may file or reinstate a complaint with the MCHR after the issuance of a notice of right to sue relating to the same practice or act. You are hereby notified of your right to sue the Respondent(s) named in your complaint in state circuit court. **THIS MUST BE DONE WITHIN 90 DAYS OF THE DATE OF THIS NOTICE OR YOUR RIGHT TO SUE IS LOST.**

You are also notified that the Executive Director is hereby administratively closing this case and terminating all MCHR proceedings relating to it. This notice of right to sue has no effect on the suit-filing period of any federal claims. This notice of right to sue is being issued as required by Section 213.111.1, RSMo, because it has been over 180 days after the filing of the complaint and MCHR has not completed its administrative processing.

Respectfully,

Alisa Warren, Ph.D.
Executive Director

March 18, 2020
Date

C: additional contacts listed on next page



EXHIBIT A

3315 W. TRUMAN BLVD.
P.O. Box 1129
JEFFERSON CITY, MO 65102-1129
PHONE: 573-751-3325

111 N. 7TH STREET, SUITE 903
ST. LOUIS, MO 63101-2100
PHONE: 314-340-7590
FAX: 314-340-7238

P.O. Box 1300
OZARK, MO 65721-1300

1410 GENESSEE, SUITE 260
KANSAS CITY, MO 64102
FAX: 816-889-3582

106 ARTHUR STREET
SUITE D
SIKESTON, MO 63801-5454
FAX: 573-472-5321

Missouri Commission on Human Rights is an equal opportunity employer/program. Auxiliary aides and services are available upon request to individuals with disabilities.

RE: Alyssa J. Huffman vs. ZOLL MEDICAL CORPORATION
E-08/19-51335 28E-2019-01431C

ZOLL MEDICAL CORPORATION
269 Mill Road
Chelmsford, MA 01824

Patricia Martin
ATTORNEY AT LAW
600 Washington Avenue, Suite 900
Saint Louis, MO 63101


Adam P. Pihana
ATTORNEY AT LAW
3275 East Ridgeview
Springfield, MO 65804



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

Judge or Division: MICHAEL J CORDONNIER	Case Number: 2031-CC00689
Plaintiff/Petitioner: ALYSSA J HUFFMAN	Plaintiff's/Petitioner's Attorney/Address ADAM PEKELO PIHANA 3275 E RIDGEVIEW SPRINGFIELD, MO 65804
Defendant/Respondent: ZOLL MEDICAL CORPORATION	Court Address: JUDICIAL COURTS FACILITY 1010 N BOONVILLE AVE SPRINGFIELD, MO 65802
Nature of Suit: CC Employmnt Discrmntn 213.111	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ZOLL MEDICAL CORPORATION Alias: R/A CSC 221 BOLIVAR ST JEFFERSON CITY, MO 65101 COURT SEAL OF  GREENE COUNTY	You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition. 06/12/2020 Date /S/ THOMAS R. BARR BY ADB Clerk
Further Information:	

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
- ☐ other: _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____
 Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ 10.00

Supplemental Surcharge \$ _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

CRIM JUL 7 2020

FILED

MAIL

CIRCUIT CLERK GREENE COUNTY

RECEIVED

JUN 26 2020

COLE COUNTY
SHERIFF'S OFFICE

(Date File Stamp)

Judge or Division: MICHAEL J CORDONNIER	Case Number: 2031-CC00689
Plaintiff/Petitioner: ALYSSA J HUFFMAN	Plaintiff's/Petitioner's Attorney/Address ADAM PEKELO PIHANA 3275 E RIDGEVIEW SPRINGFIELD, MO 65804
Defendant/Respondent: ZOLL MEDICAL CORPORATION	Court Address: JUDICIAL COURTS FACILITY 1010 N BOONVILLE AVE SPRINGFIELD, MO 65802
Nature of Suit: CC Employment Discrimination 213.111	

Summons in Civil Case

The State of Missouri to: ZOLL MEDICAL CORPORATION

Alias:

R/A CSC
221 BOLIVAR ST
JEFFERSON CITY, MO 65101
COURT SEAL OF



GREENE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

06/12/2020
Date

/S/ THOMAS R. BARR BY ADB
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to:
CSC (Lawyers), S.C. (name) designee (title).
☐ other: _____

Served at 350 E. High St. (address)
in Cole (County/City of St. Louis), MO, on 06-29-2020 (date) at 8:00 AM (time).

Sheriff John P. Wheeler
Printed Name of Sheriff or Server

St. Anne Weag
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____
Date Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
Non Est \$ _____
Sheriff's Deputy Salary
Supplemental Surcharge \$ 10.00
Mileage \$ _____ (_____ miles @ \$_____ per mile)
Total \$ _____

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

83975
\$200
Oca